

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/932,538

Page 2

REMARKS

The Examiner has required restriction among the following claims:

Group I: Claims 1-4, drawn to particles comprising calcium phosphate wherein said particles are at least partially coated with a pharmacologically active agent;

Group II: Claims 5-7, drawn to methods of inducing immunity utilizing particles comprising calcium phosphate wherein said particles are at least partially coated with a pharmacologically active agent; and

Group III: Claims 8-9 and 11, drawn to methods of making calcium phosphate particles wherein said particles are at least partially coated with a pharmacologically active agent.

Applicant elects Group II, Claims 5-7, drawn to methods of inducing immunity utilizing particles comprising calcium phosphate wherein said particles are at least partially coated with a pharmacologically active agent, with traverse.

The undersigned respectfully submits that the restriction requirement is erroneous and should be withdrawn. There are two criteria for a proper requirement for restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner. MPEP § 803. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP § 803 (emphasis added).

The undersigned respectfully submits that examination of the claims of the entire application will not impose a serious burden. With respect to the restriction between the groups, the undersigned respectfully submits that the Examiner has failed to establish any undue burden placed upon the PTO by the presence of more than one group in the same application.

In order to advance the prosecution of this case, Applicant elects Group II, with traverse. Applicant requests, however, that Groups I and III be rejoined for further prosecution. The presence of the claims of Groups I and III in a single application does not impose an undue burden on examination. Once the Examiner searches "calcium phosphate particles at least

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/932,538

Page 3

partially coated with a pharmacologically active agent" that search will necessarily include methods in which those particles can be made.

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/932,538

Page 4

CONCLUSION

Because this response is timely, no fees are believed due at this time. In the even that fees are due, the undersigned authorizes such fees to be charged to Deposit Account number 11-0855.

Respectfully submitted,



Catherine E. Fianning, Reg. No. 54,095
Attorney for Assignee

Kilpatrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia, 30309-4530
Phone: 404-532-6938